

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

**Paradise Biryani Express, Inc.,
a.k.a. Paradise Biryani Pointe, LLC,
a.k.a. Paradise Biryani Pointe,**

and

Narsing Raj Gowlikar,

Respondents.

Case No. 2014-0286

* * * * *

ORDER TO SHOW CAUSE

WHEREAS, the Securities Division of the Office of the Attorney General of Maryland (the “Securities Division”) initiated an investigation into the franchise-related activities of Paradise Biryani Express, Inc., a.k.a. Paradise Biryani Pointe, LLC, a.k.a. Paradise Biryani Pointe and Narsing Raj Gowlikar (collectively, “Respondents”) under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. CODE ANN. BUS. REG. §14-201 et seq. (2015 Repl. Vol.) (the “Maryland Franchise Law”) and the regulations promulgated thereunder; and

WHEREAS, on the basis of that investigation by the Securities Division, the Maryland Securities Commissioner (the “Commissioner”) concluded that grounds exist to allege that Respondents violated the registration, disclosure, and antifraud provisions of the Maryland Franchise Law in relation to offers to sell and sales of Paradise Biryani franchised restaurants in Maryland; and

WHEREAS, on December 22, 2014, the Securities Commissioner and Respondents entered into a Consent Order (the “Consent Order”) to resolve the Respondents’ alleged violations of the Maryland Franchise Law; and

WHEREAS, based on information presented by the Securities Division, the Securities Commissioner has found grounds to allege that Respondents have violated the terms of the Consent Order and, in addition, violated the antifraud, registration, and disclosure provisions of the Maryland Franchise Law;

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED:

I. JURISDICTION

1. The Securities Commissioner has jurisdiction in this proceeding pursuant to Section 14-210 (a) of the Maryland Franchise Law.

II. STATEMENT OF FACTS

A. Respondents

2. Paradise Biryani Express, Inc. (“Paradise Biryani”) is a New Jersey corporation with a principal business address of 2 Paddock Dr., Plainsboro, NJ 08536.

3. Paradise Biryani also uses the names “Paradise Biryani Pointe, LLC” and “Paradise Biryani Pointe.”

4. Narsing Raj Gowlikar (“Gowlikar”) is the founder and president of Paradise Biryani.

5. Gowlikar is the owner of the Paradise Biryani Pointe trade name and the only person with managerial responsibility over the offer and sale of Paradise Biryani Pointe franchises.

6. Paradise Biryani offers and sells franchises for the operation of Indian restaurants

featuring an Indian specialty food called Biryani.

7. In 2007, Paradise Biryani Express began offering licenses for the operation of Paradise Biryani restaurants.

B. Background

8. On December 22, 2014, the Securities Commissioner entered into a Consent Order with Respondents to resolve alleged violations of the registration, disclosure, and antifraud provisions of the Maryland Franchise Law, in relation to offers and sales of Paradise Biryani franchises in Maryland in the form of “Business License Agreements.”

9. As part of the Consent Order, the Securities Commissioner concluded that Respondents violated sections 14-214, 14-216, 14-223, 14-228, and 14-229 of the Maryland Franchise Law and section 02.02.08.16 of the Code of Maryland Regulations (COMAR).

10. Under the terms of the Consent Order, Respondents agreed, among other things, to “promptly file with the Securities Division” and “diligently pursue” the completion of an initial application to register its franchise offering in Maryland and, within five days of the date of the Consent Order, make a “rescission offer” to two Maryland Franchisees identified in the Consent Order. “Diligently pursue” was defined under the Consent Order to mean that an applicant would submit a substantive response to a Securities Division comment letter regarding a registration application no later than 30 days after the applicant’s receipt of the comment letter.

11. Under the Consent Order, Respondents also agreed that if Respondents had not obtained an effective registration of the Paradise Biryani franchise offering in Maryland by September 30, 2015, Respondents would make a second rescission offer to any Maryland Franchisee that had not previously rescinded its Paradise Biryani franchise.

12. Under the form of rescission offer required under the Consent Order, Respondents

agreed to return all initial license fees that the Maryland Franchisees paid, if those Maryland Franchisees opted to rescind their Paradise Biryani franchise.

13. The rescission offer Respondents were required to make to the Maryland Franchisees under the Consent Order provided that, if any Maryland Franchisee opted to rescind its franchise, Respondents would make payments to the rescinding franchisee within 30 days after Respondents' receipt of the acceptance of the offer of rescission.

14. Based on information Respondents provided to the Securities Division, one of the Maryland Franchisees, Paradise Biryani Point, Inc., paid Respondents an initial license fee of \$30,000 for the right to operate a Paradise Biryani restaurant located in Gaithersburg, Maryland, and the second Maryland Franchisee, Seven Hills, LLC, paid Respondents an initial license fee of \$50,000 for the right to operate a Paradise Biryani restaurant in Catonsville, Maryland.

15. Under the Consent Order, Respondents agreed to pay a civil monetary penalty of \$85,000 to the State of Maryland on or before December 31, 2015, which penalty was to be reduced by the amount of any payments Respondents had made to Maryland Franchisees that opted to rescind their franchise under the terms of the Consent Order.

C. Failure to Promptly File and Diligently Pursue a Registration Application

16. On May 28, 2015, approximately five months after the date of the Consent Order, the Securities Division wrote counsel for Respondents advising them that Respondents had not, as of that date, filed an initial franchise registration in Maryland, and reminded them of their obligation to "promptly file" and diligently pursue that registration.

17. Respondents did not file an initial application to register the Paradise Biryani franchise in Maryland until October 8, 2015, more than nine months after the date of the Consent Order.

18. On October 27, 2015, the Securities Division sent a comment letter to Respondents' counsel identifying 27 deficiencies in Respondents' franchise registration application.

19. Respondents did not respond to the Securities Division comment letter until January 7, 2016.

20. On January 11 2016, the Securities Division sent a second comment letter to Respondents' counsel identifying nine deficiencies that Respondents had not corrected.

21. Respondents did not respond to the Securities Division's January 11, 2016 comment letter.

D. Failure to Pay Civil Monetary Penalty to State of Maryland

22. As of the date of this Order to Show Cause, Respondents have not paid to the State of Maryland any portion of the civil monetary penalty required under the Consent Order.

23. The civil monetary penalty was due to be paid to the State of Maryland no later than December 15, 2015.

24. The amount of the civil monetary penalty under the Consent Order was to be at least \$5,000, if both of the Maryland Franchisees rescinded their respective Paradise Biryani franchises, or a larger penalty, up to a maximum of \$85,000, if one or both of the Maryland Franchisees opted not to exercise their respective rights to rescind their Paradise Biryani franchise.

E. Failure to Make Rescission to Maryland Franchisee

25. As of the date of this Order to Show Cause, Respondents have not made any rescission payments to the Maryland Franchisees under the terms of the Consent Order.

26. On June 15, 2015, counsel for Respondents represented to the Securities Division that both Maryland Franchisees received initial offers of rescission, as required under the Consent Order and that both Maryland Franchisees indicated that they did not wish to have their Paradise

Biryani franchises rescinded.

27. On October 1, 2015, the Securities Division wrote to Respondents' counsel to remind Respondents that under the Consent Order, if Respondents had not obtained an effective franchise registration in Maryland before September 30, 2015, Respondents were to send to the Maryland Franchisees a second rescission offer.

28. On October 7, 2015, Respondents' counsel advised the Securities Division that he was preparing the second rescission offer to send out to the Maryland Franchisees.

29. On February 1, 2016, the Securities Division wrote to Respondents' counsel to once again remind Respondents of the obligation to send a second rescission offer to the Maryland Franchisees. The February 1, 2016 letter also reminded Respondents that they were to pay the State of Maryland the sum of \$85,000 on or before December 31, 2015, or a lesser penalty equal to \$85,000 reduced by the amount of license fees repaid to rescinding Maryland Franchisees.

30. On February 12, 2016, Respondents' counsel provided the Securities Division with copies of two separate rescission offers, allegedly signed by each of the Maryland Franchisees, indicating that both Maryland Franchisees opted to rescind their respective Paradise Biryani franchises.

31. Respondents' counsel represented to the Securities Division that Respondents provided the signed rescission letters to him but nothing else.

32. On March 10, 2016, the Securities Commissioner issued a Subpoena for Documents to Respondent seeking, among other things, all documents demonstrating that Respondents had refunded the license fees to the Maryland Franchisees who accepted Respondents' offer to rescind their Paradise Biryani franchise.

33. In response to the Securities Commissioner's Subpoena for Documents,

Respondent Gowlikar produced to the Securities Division copies of two Promissory Notes: one Promissory Note payable to Seven Hills, LLC in the principal amount of \$50,000, with zero percent interest, due on or before September 1, 2016; and a second Promissory Note payable to Paradise Biryani Pointe Corp, in the principal amount of \$30,000, with zero percent interest, due on or before September 1, 2016.

34. Respondents had not sought to modify the terms of the Securities Division's Consent Order and did not obtain approval from the Commissioner to unilaterally modify the terms of payment of rescission to the Maryland Franchisees or the payment of the civil monetary penalty to be paid to the State of Maryland.

F. False Submission of Signed Rescission Offers

35. Upon information and belief, contrary to Respondents' representation to the Securities Division, the owners of Seven Hills, LLC never received a rescission offer from Respondents, never opted to rescind their Paradise Biryani franchise, and never received a Promissory Note from Respondents for repayment of their initial license fees.

36. Upon information and belief, the rescission offer allegedly signed by an owner of Seven Hills, LLC opting to rescind the Paradise Biryani franchise that Respondents provided to the Securities Division in February 2016 was not, in fact, signed by that owner or any owner of Seven Hills, LLC.

COUNT ONE (Violation of Consent Order of Securities Commissioner)

WHEREAS, on December 22, 2014, Respondents entered into a Consent Order with the Securities Commissioner to resolve alleged violations of the Maryland Franchise Law in relation to offers and sales of Paradise Biryani franchises in Maryland; and

WHEREAS, under the Consent Order, the Securities Commissioner concluded that Respondents violated sections 14-214, 14-216, 14-223, 14-228 and 14-229 of the Maryland Franchise Law and section 02.02.08.16 of COMAR; and

WHEREAS, under the Consent Order, if any Respondent failed to comply with the terms of the Consent Order, the Statement of Facts and the violations of the Maryland Franchise Law alleged in the Consent Order would be deemed admitted against that Respondent; and

WHEREAS, under the Consent Order, Respondents agreed that they would promptly file and diligently pursue the completion of an application to register the Paradise Biryani franchise offering in Maryland; and

WHEREAS, Respondents did not promptly file or diligently pursue the completion of an application to register the Paradise Biryani franchise offering in Maryland; and

WHEREAS, under the Consent Order, Respondents were required to provide a rescission offer to Maryland Franchisees upon the later of (a) the effective date of registration of Respondents' franchise offering in Maryland; or (b) September 30, 2015; and

WHEREAS, Respondents did not make or complete the rescission offers to Maryland Franchisees required under the Consent Order; and

WHEREAS, under the Consent Order, Respondents were required to pay to the State of Maryland a civil monetary penalty by December 31, 2015 in the amount of either \$85,000 or an amount equal to \$85,000 reduced by the amount of payments Respondents had made to Maryland Franchisees under the Consent Order; and

WHEREAS, as of the date of this Order to Show Cause, Respondents have not made any payments to the State of Maryland or to the Maryland Franchisees;

NOW THEREFORE, IT IS HEREBY ORDERED, that Respondents show cause why they should not be ordered to permanently cease and desist from violations of the Consent Order and permanently cease and desist from the offer and sale of franchises in Maryland in violation of sections 14-214, 14-223, 14-228 and 14-229 of the Maryland Franchise Law and section 02.02.08.16 of COMAR.

COUNT TWO
(Violation of Registration Provisions)

WHEREAS, sections 14-214 and 14-228 of the Maryland Franchise Law make it unlawful for any person to offer to sell, through advertisement or otherwise, or sell a franchise in Maryland or to a Maryland resident unless the offering has been registered with the Commissioner before the person offers to sell, through advertisement or otherwise, or sells the franchise in Maryland; and

WHEREAS, Respondents offered to sell franchises and sold franchises in Maryland without registering the offering with the Commissioner;

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondents show cause why they should not be ordered to permanently cease and desist from the offer and sale of franchises in Maryland in violation of the registration provisions of sections 14-214 and 14-228 of the Maryland Franchise Law.

COUNT THREE
(Violation of Disclosure Provisions)

WHEREAS, section 14-223 of the Maryland Franchise Law makes it unlawful for any person to offer to sell or sell a franchise in Maryland or to a Maryland resident without first giving a prospective franchisee a copy of the offering prospectus and a copy of each proposed agreement

that relates to the sale of the franchise at the earlier of: (1) 14 calendar days before the execution by the prospective franchisee of any binding agreement with the franchisor; (2) 14 calendar days before payment of any consideration that relates to the franchise relationship; or (3) a reasonable request by a prospective franchisee to receive a copy of the offering prospectus; and

WHEREAS, under section 14-216 (a) of the Maryland Franchise Law and section 02.02.08.04 of COMAR, the “offering prospectus” that a franchisor must give to a prospective franchisee is the Franchise Disclosure Document that is registered by the Securities Division and that contains 23 separate Items of disclosure; and

WHEREAS, Respondents offered to sell and sold franchises in Maryland without giving prospective Maryland franchisees the offering prospectus required under the Maryland Franchise Law at any time before the Maryland franchisees paid consideration or signed a binding contract related to the franchise;

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondents show cause why they should not be ordered to permanently cease and desist from the offer and sale of franchises in violation of the disclosure provisions of sections 14-223 and 14-216 of the Maryland Franchise Law.

COUNT FOUR
(Misrepresentation in connection with the offer or sale of franchises)

WHEREAS, section 14-229 of the Maryland Franchise Law prohibits any person, in connection with the offer to sell or sale of a franchise, directly or indirectly, to employ a device, scheme or artifice to defraud; make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engage in any act, practice, or course of business which

operates or would operate as a fraud or deceit on any person; and

WHEREAS, in connection with the offer and sale of franchise, Respondents made material misrepresentations of fact and/or omissions of material fact about the Paradise Biryani franchise offering, including misrepresenting that Respondents were offering licenses rather than franchises and omitting material information about the Paradise Biryani franchise offering, including the financial condition of the franchisor, the number of Paradise Biryani outlets that opened and closed in the previous three fiscal years, the names and contact information for existing and recently terminated Paradise Biryani franchisees/licensees, and other material information required to be disclosed in a franchise offering prospectus; and

WHEREAS, section 14-229 of the Maryland Franchise Law and COMAR 02.02.08.16(D) prohibit any person, in connection with the offer to sell or sale of a franchise, directly or indirectly, to make any oral or written statements concerning the potential earnings from operation of a franchise (“Earnings Claim”) if that Earnings Claim has not been included in the franchisor’s FDD; and

WHEREAS, Respondents made Earnings Claims about the Paradise Biryani franchise offering in the form of the Paradise Biryani Pointe “Business Plan” that included, among other information, a financial projection of five years of sales and costs for a Paradise Biryani Pointe restaurant franchise, but Respondents did not make the required disclosures about that Earnings Claim, or any Earnings Claim, in an FDD or in any writing given to prospective franchisees;

NOW THEREFORE, IT IS HEREBY ORDERED, that Respondents show cause why a final order should not be issued against them directing them to permanently cease and desist from the offer and sale of franchises in violation of section 14-229 of the Maryland Franchise Law and COMAR 02.02.08.16

**REQUIREMENT OF ANSWER AND
NOTICE OF OPPORTUNITY FOR HEARING**

IT IS FURTHER ORDERED, pursuant to section 14-210 of the Maryland Franchise Law and COMAR 02.02.06.06, that Respondents shall file with the Commissioner a written Answer to this Order within fifteen days of service of the Order. The Answer shall admit or deny each factual allegation in the Order and shall set forth affirmative defenses, if any. A respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state. The Answer also shall indicate whether a respondent requests a hearing. A hearing will be scheduled in this matter if one is requested in writing. Failure by any respondent to file a written request for a hearing in this matter shall be deemed a waiver by that respondent of the right to such a hearing. Failure of any respondent to file an Answer, including a request for a hearing, shall result in entry of a final order directing that Respondent to permanently cease and desist from violation of the Maryland Franchise Law.

DATE OF THIS ORDER

June 2, 2016

SO ORDERED:

**Commissioner's Signature
on File w/Original Document**

Melanie Senter Lubin
Securities Commissioner